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JUDAH P. BENJAMIN

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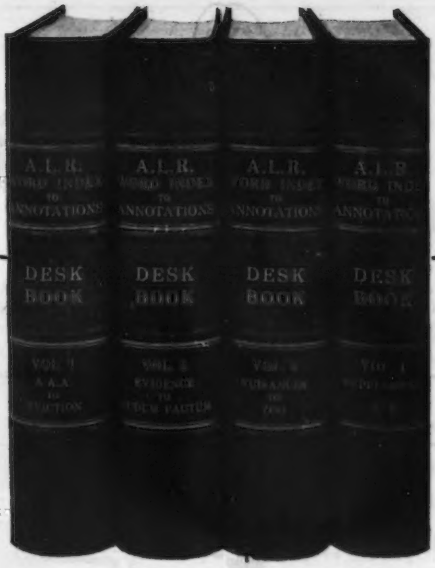

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Case and Comment

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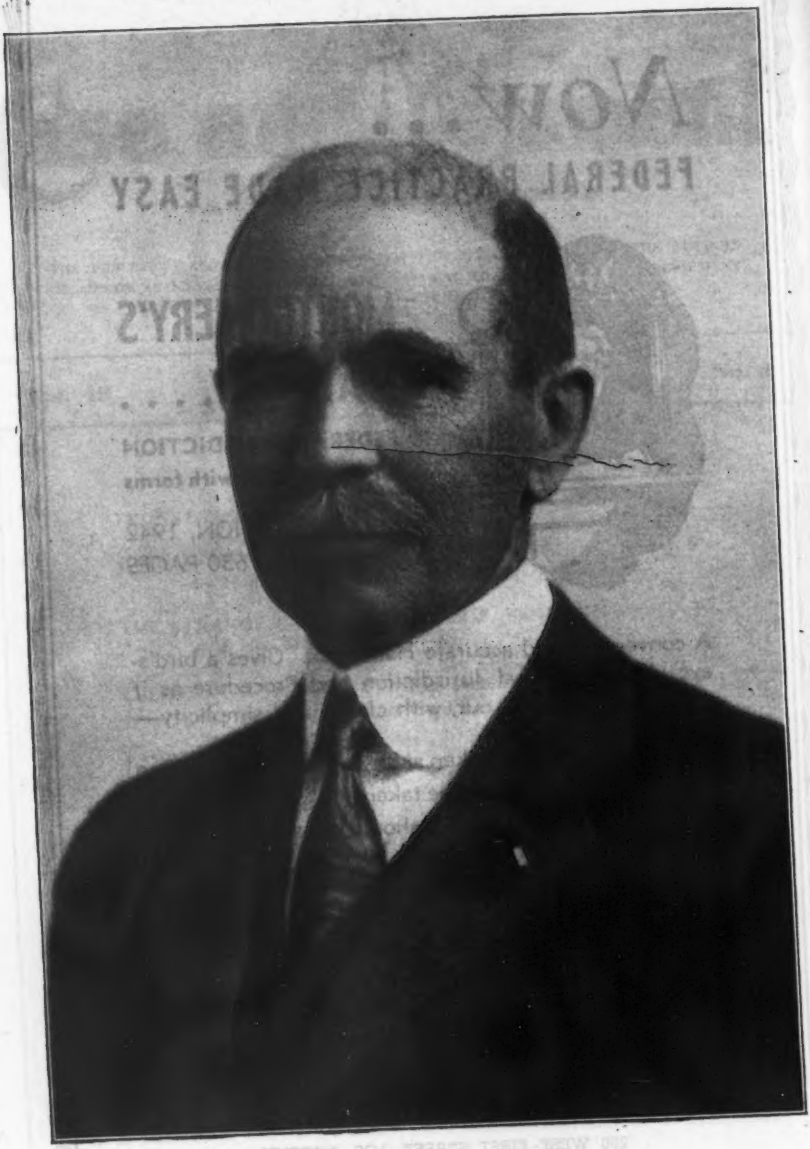

DEAN JOHN H. WIGMORE

JOHN HENRY WIGMORE

By HON. EVAN A. EVANS[1]

One more shuttle in the loom of time is lost:
One more thread that intertwined with ours is broken.

It is with no satisfaction, yet from an impelling urge to speak a personal tribute, that I presume today to express the homage of the judiciary to John H. Wigmore. I shall avoid superlative phrases. There are times when such words are diminutive and weaken the inspiration of the story of a life so worthy of purpose and so full of accomplishment.

I feel sure and certain in saying that there is no appellate court of standing in the land which has not turned for guidance to this scholar and his monumental work on the *Law of Evidence.* And no appellate court can be found that has not at some time or other, chosen to quote his expressed views in support of a position which it is about to take. In a brief study of the United States Supreme Court Reports, which I made this week to support this statement, I found in a single recent volume that Wigmore on Evidence had been cited three different times. In another volume, he was quoted twice. This about represents the attitude of the United States Supreme Court. In the state supreme courts, where textbook citations are more numerous, more frequent reliance on Dean Wigmore is found. The same may be said of the opinions of the inferior Federal courts.

Not only have the courts sought Wigmore for a statement of the law, but he is studied for his pronouncement of the philosophies which lay back of the law. He traced the law to its source—to its origin. He sought and stated its reasons. Far more than collect the cases or make a statement of the law as expressed in the opinions, did Dean Wigmore accomplish. He conceived his work to be that of a lawgiver. He waged a ceaseless war on imperfect law, or law as is, but which needed growth and development. He was the persistent foe of laws that lagged behind the advance of commerce or the accepted course of conduct in any other field. Great must have been his satisfaction to see his views adopted, slowly as is the wont of courts, but surely as the force of his reason compelled acceptance of his conclusions.

Dean Wigmore was of the aristocracy—of the aristocracy of the intellectuals. He was a leader among intellectuals—a group which consists solely of those who earn their merit by a rare devotion to unprejudiced, unbiased study and reflection. His was not a mind to compromise. He made his pronouncements, supported them by a background of historical references, and fortified them with his reasons. There he left them, relying on their appeal to intellects like his own, for their ultimate acceptance.

He was the scholar of our dreams—the student who appears rarely in the legal profession—seldom more than once in a generation—whose brilliant, restless mind touched and then surveyed all the shores of legal venture from the time when man took on some of the attributes of a social being, down to the present, when—let us hope for the last time—he is mak-

[1] Senior Circuit Judge of the Circuit Court of Appeals for the Seventh Judicial Circuit. Address given at memorial service on June 11, 1943 in Thorne Hall, Northwestern University.

ing a mighty effort to overthrow the law of reason by the law of might.

Professor and teacher superb – he was the natural complement of the student and scholar, extraordinary. Only admiration could come from students to a professor whose life was but an emphasized effort of the student. And surely such admiration of students grew with the years as the students matured into ripened practitioners.

To such a man as John Wigmore, there was no possible retirement. Officially he might be retired. Actually he was in the harness (and in the library) from morning to night. For him, there was no closed season. There is, and can be, no laying down of work by one whose inquiring mind never dims.

Each decade of Dean Wigmore's life brought forth additional volumes of his works—each a monument to the acquisitive faculty, plus the unusual gift of putting into understandable sequence the factual story of the world's climb out of darkness. Had he never written a word on the *Law of Evidence,* his *Panorama of the World's Legal Systems* would have established him as a scholar and researcher of note.

I speak of his incessant labor, right up to the last day of his life, not regretfully but proudly. For participation in responsible activities of life is the desire and ambition of every worthy citizen. It is what makes life enjoyable and worthy. It furnishes much of the permanent joy and inspiration of our lives.

To borrow from the thoughts of Justice Holmes seems warranted, for in so doing, I am merely applying the words of one Master to the life and deeds of another Master. Justice Holmes and Dean Wigmore were kindred spirits. Both were the philosophers, as well as the prophets, of the legal profession. They both worked in the same vineyard.

In closing, I therefore draw on the Holmes' philosophy. Life and Death are ever associated. Everything comes to an end—even life itself—as it came to John Wigmore. Death is always plucking at our sleeves and saying, "Live—Live Now, for I am coming."

We accept – we must accept – our destiny to work, to work more, and to die working. At the passing of a hero who has done these things, we should not grieve at the unavoidable loss. Rather with the contagion of his efforts, we should go back, with a kind of a desperate joy, and take up the pleasant task of work. But it must be work that is backed by a faith—a faith in others and in ourselves. That faith says:

"Life is a story which our imagination does not permit to stop at its end. We aim at the infinite and when our arrow falls short of its target, we do not call it failure. It is the promise, the fulfillment of which may be realized in the tomorrow of a century ahead."

To this knight errant, whose life's work among us is over, we say, sadly yet hopefully, "Hail and Farewell."

An attitude towards the rules of law—an attitude that imports an understanding of the fullest significance of those rules—is particularly necessary in judging the records of legal systems alien to our own. The purport of the records may be verbally plain, and the ideas which the words convey may be familiar and apparently obvious, but a search into the background may reveal something very different.

—Dean Wigmore.

In Chicago Law Review, February 1937.

THE STRANGE CAREER OF JUDAH P. BENJAMIN

By LAURIE H. RIGGS

Member of the Baltimore Bar

(Condensed from 36 Law Library Journal 57, May 1943)

WERE one of our novelists to take as his hero a penniless emigrant lad, have him surmount difficulties in early life and become a successful American lawyer, have him gain a fortune and acquire a fine estate, only to lose them through flood and the endorsement of a note for a friend; by dint of hard work to acquire another fortune; support two families, a wife and daughter in Paris and a mother and sisters in America; and then have him achieve national fame under one flag, international renown under another, splendid distinction under a third; and have him die at a ripe old age, domiciled under a fourth: not a few readers would feel that the law of probabilities had been violated. If, in addition to this, he made that hero a scion of that remarkable people whose history, as George Eliot says: "is a national tragedy lasting for fifteen hundred years," and had him conquer in the most aristocratic of cities, not merely the obstacles of rank and of fortune, but that sterner, almost impassable barrier of race prejudice, and marry the beautiful and charming daughter of one of its first families; become a successful practitioner before the Supreme Court, with an income of $75,000 a year; organize with others two railroads; enter politics and become a United States senator: reviewers would think that they should point out that even fiction has its limits. But, should this bold novelist dare to slip in a chapter or two, making his hero one of the central figures of a great war in which he lost everything; and a little later, a proscribed rebel in the land he loved so dearly; have him make a leisurely escape through a country swarming with watchful enemies, and after getting him to seeming safety, first shipwreck him and have him picked up at open sea, and finally let him reach his destination with the vessel in flames, scarcely able to reach the harbor in safety, and have him within a year lose almost all his money: preposterous, impossible and absurd would doubtless be mild expressions of critical wrath. If this novelist, as a climax to this incredible story, should have his hero commence at fifty-five the study of law as any youth might; become an English barrister-at-law, surviving the worry and starving process of building up a practice at the bar of England (meantime eking out a living by writing for the press); have him gradually succeed; write a notable work on Sales; become so successful at sixty that he is making $10,000 a year, at seventy-one over $70,000; build a magnificent home in Paris for his wife and daughter; become Queen's Counsel; and in sixteen years, past the meridian of life, have him in addition "achieve at the English Bar more than most men can achieve in a lifetime;" and on retiring at the age of seventy-two have him banqueted by two hundred and fifty of England's highest judicial officers, from the Lord High Chancellor and the Lord Chief Justice down: yet, such would be but a few highlights taken from the career of Judah P. Benjamin, lawyer, orator, and statesman; a senator of one Republic, a cabinet minister of another, and a distinguished leader of the bar of a country to which he transferred his

allegiance after the fiftieth milestone of his life had been passed.

This extraordinary man, whose life reads like the most impossible of romances, was born on the Island of St. Thomas on May 6, 1811. It chanced that Benjamin was born a British subject, and according to the law of England, that fixed his status for life, so that when many years later he sought her friendly shores, he came not as an alien, but as a citizen.

In 1818 he was brought by his father to Wilmington, North Carolina, and sent to a well-known school at Fayetteville. It is said that he showed remarkable talent in his early years. In 1827 he entered Yale University, and splendidly distinguished himself there, both as a popular student and as a prize winner, standing at the head of his class. His means were so meager that he left Yale in his sophomore year. Soon afterwards he went to New Orleans, taking any occupation he could find. He became a private tutor and a clerk in a notarial office, giving the Creoles lessons in English, and himself studying French and Spanish and also taking a course in law. He was admitted to the bar in 1832 at the age of twenty-one. The next year he married a beautiful young French Creole who had been his pupil. His wife was a devout Roman Catholic, and a member of one of the leading families in New Orleans.

During the first years of his practice, he found time to prepare for his own use a digest of the decisions of the late territory of Orleans, and of the Supreme Court of Louisiana, which was the earliest digest of the Louisiana decisions. He, with Thomas Sliddell, edited it for publication in 1834. This was Benjamin's work; it received instant recognition, and like everything he did, was remarkable for simplicity and lucidity of method and presentation.

With a wonderful facility in acquiring knowledge, and a special talent for languages, he perfected himself in French and Spanish, and made himself familiar with the legal system which prevailed in what had so recently been French or Spanish territory. Thus equipped, he became, after ten years of prodigious labor at the bar, a recognized leader, especially in commercial law. He also prospered financially, bought a sugar plantation, and withdrew from the practice of law on account of his eyes, devoting his time to the raising of sugar in a scientific way.

His eyesight having improved, he returned to the practice of law, and soon became one of the leading lawyers of the United States. He was recognized as a consummate master of the art of stating his case. Indeed it may be said of him as of Calhoun, that his every statement was an argument, as is shown by the well-known story about his first appearance before the Supreme Court of the United States. Justice Fields said to Jeremiah Black, the adversary of Benjamin: "You had better look to your laurels, for that little Jew from New Orleans has stated your case out of Court."

One of his most interesting cases was *McDonogh's Executors* v. *Murdoch*,[1] in which he and Reverdy Johnson, representing the heirs at law, tried to break the McDonogh will by which enormous legacies were left to the cities of Baltimore and New Orleans. (The McDonogh School in Baltimore County owes its origin to the McDonogh legacy.) Though Benjamin was for the losing side, the Court noted the power and ability of his argument. Glowing press descriptions appeared at the time. The reporter for the *Washington Union* enthusiastically said: "Whoever was not in the Supreme

[1] 15 How 367, 14 L ed 732.

Court room this morning missed hearing one of the finest forensic speakers in the United States. In the case of the great McDonogh Estate, Mr. Senator Benjamin made one of the most truly elegant and eloquent speeches that it was ever my good fortune to hear."

In 1860, the last year of his practice in the United States, he was engaged in California in litigation over quicksilver mines. The case was appealed, but the war intervening, he was necessarily absent and could not argue it. In 1863, when Benjamin was in Richmond as a member of the enemy Cabinet, his associates, A. S. Peachey, Reverdy Johnson, Charles O'Connor, and J. J. Crittenden, did him the signal honor of filing his brief before the Supreme Court of the United States.[2]

His legal talents became so generally recognized that President Pierce offered him the position of Associate Justice of the United States Supreme Court, but he preferred his activities at the bar and in politics. The effect which the acceptance of this offer might have had upon subsequent events may be made the subject of curious speculation. On the one hand, the war between the states might have ended much more quickly; and on the other, the legal literature of the United States might have been enriched by some masterly judgments, while the English bar would have been poorer.

Mr. Benjamin was the first Jew ever to sit in the United States Senate, and one of the best-qualified men to occupy a seat in that august body. He took a leading part in the discussion of all questions leading up to the Civil War. He had the distinction of being elected to the Senate as a Whig, of changing his politics during his term, and being re-elected as a Democrat. His farewell speech on leaving the Senate and defending the right of Louisiana to secede from the Union, with the dramatic close in which he said: "Traitors, treason, aye, sir, the people of the South imitate and glory in just such treason as glowed in the soul of Hampden. Just such treason as leaped in living flames from the impatient lips of Henry; just such treason as encircles with a sacred halo the undying name of Washington. . . . You may set our cities in flames. . . . You will never subjugate us. An enslaved and servile race you can never make us. No, never, never!" moved the Senate galleries to uncontrollable cheers, and is properly used as one of the finest examples of American oratory.

He cast his fortunes with the Confederacy, and was first Attorney-General, then Secretary of War until the Confederate reverses at Forts Henry and Donelson and Roanoke Island, for which he was unjustly blamed. Jefferson Davis, being in a position not only to know the true facts, but also to appreciate the value of Benjamin's services, raised him from Secretary of War to Secretary of State, a position he held until the end of the war.

Serene and cheerful, even in the gloom of disaster, Mr. Benjamin followed the retreat of the wrecked Government from Richmond. He was the life of the party, refusing to be depressed himself, or allowing others to be so, and yet he knew that he was a ruined man, with scarce a hope of saving some little from the wreck of the second fortune he had built up by his own labors, and that he must begin life anew.

Upon hearing that General Johnson had surrendered and that amnesty had not been granted to the Executive Officers of the Confederate Government, he obtained the consent of President Davis to make his escape

[2] United States v. Castillero, 2 Black 1, 17 L. ed 360.

through Florida. He parted from Mr. Davis at Washington, Georgia, and knowing his journey to be a hazardous one, he disguised himself first as a Frenchman, and later as a farmer in search of land in Florida upon which to settle. Dressed in homespun clothes made by a farmer's kind wife, and mounted on a horse with the commonest and roughest equipment he could find, he journeyed as far as possible on byways, always passing around towns and keeping in the less inhabited districts. Finally he reached central Florida. He intended to make his escape from the east coast of Florida, but hearing that a boat was not to be had, and that the risk of detection would be great, he made his way to the Gamble Mansion near Bradentown on the west coast of Florida, where he sought refuge and was welcomed as a fugitive in hiding from Northern troops. There was a secret chamber in the massive fireplace where Benjamin was hiding while Northern sympathizers visited the mansion seeking him. (This mansion is now the property of the state of Florida, as a memorial to Judah P. Benjamin.)

From there Benjamin went aboard Captain Fred Tresca's sloop "The Blond" (for even in those days gentlemen preferred blondes). In this small open boat, with no place to sleep, accompanied by two trusty companions, he set out on a six hundred mile journey to the Bimini Islands. Federal officers intercepted this party at Key West, where a federal blockade was established. When they went aboard, they found an old colored mammy preparing breakfast for her boys. This was Judah P. Benjamin.

He arrived at the Bimini Islands on July 10, 1865, believing that his risk of capture was at an end. He then sailed in a small sloop loaded with wet sponges bound for Nassau. When the sponges dried, they expanded and opened the seams of the boat, and it foundered at sea, sinking with such rapidity that the occupants hardly had time to jump into a small skiff which was in tow. There he was on the Atlantic Ocean, with one oar, a pot of rice, a small keg of water as supplies, and three negroes as his companions; in imminent disaster, only five inches of the boat out of water, on the broad ocean with the certainty of not being able to survive five minutes if the sea became the least rough. The sea remained calm, and they were picked up by His Britannic Majesty's lighthouse yacht "Georgia," and were treated kindly by Captain Stewart, who sailed out of his way to take Mr. Benjamin back to Bimini.

He then went to Nassau where he wrote his sister on July 22, 1865, giving an account of his journeys, and telling her, "I am contented and cheerful under all reverses, and only long to hear of the health and happiness of those I love." From Nassau he went to St. Thomas Island, where he visited the scenes of his early childhood.

Unbelievable as it may sound, his misfortunes were not at an end. He sailed in a few days for England. The ship caught fire and barely made the harbor in safety. But flood and fire, and the dangers of the highways notwithstanding, at last he reached England safe from the ever detested Yankees, with but a scanty remnant of his fortune left him, to begin anew in a strange land.

Probably not until his foot touched English soil did Benjamin have time to pause and survey the wreck which the events of the last few years had wrought in his fortune. Proscribed, bankrupt, the noonday of his life long past, he had been forced to depart from the land of his adoption and achievement and seek in another not merely refuge, but opportunity as well. After he had carved success by

years of exertion, now in his fifty-fifth year he was forced to begin his labors once more. Having been the architect of two fortunes, he was now compelled to commence the construction of a third, for the federal authorities had promptly confiscated his property and possessions. His friends managed to ransom his private library and send it to him; a testimonial of their regard which was not, we may feel certain, unappreciated. His law library, however, for which he probably would have been more grateful, was beyond redemption. The late Baron Pollock tells us that the only two injuries suffered by Benjamin at the hands of the Northerners, of which he spoke with anything like bitterness, was that they burned his lawbooks and drank his Madeira. From this remark it is seen that even his resentment was tempered with his characteristic good humor.

Notwithstanding the fact that he had declined a place on the highest Court of the United States, the regulation of the English bar offered him no escape from the customary years of study demanded of a legal novice. He was entered as a student at Lincoln's Inn, June 13, 1866. Aspirants read in the office of some eminent counsel. He was received in Charles Pollock's chambers, a fact which increased his financial responsibility. He was driven to newspaper work to help support himself. The editor of the *London Daily News* employed him as a writer, particularly on international subjects.

There followed a unique recognition of his standing in the legal world, the action of the barristers of the Inn at Court in dispensing with the three-year rule, and calling him to the bar after less than five months as a student. Judge Kenesaw Mountain Landis says that Benjamin was the first American not a graduate of Oxford to be admitted to the English bar. He chose Liverpool for his legal efforts, and he hoped, not in vain either, to derive advantage from his former connections with the merchants of that great seaport.

Nevertheless, the first few years were almost as difficult for him as for the ordinary tyro just commencing to practice. Nothing, however, seemed to dishearten him. At the outset of his career in the United States, he had turned his leisure to profit by compiling a digest. He now imitated that example by writing his great work on the *Law of Sale* which was published in 1868. It became standard at once in spite of the fact that the author was still living. From the day of its appearance, business flowed in upon him.

His first case in the English courts was one which must have aroused his strongest sympathy. It was a suit brought by the United States Government against McRae,[3] ex-Agent for the Confederate States of America. The suit was to compel McRae to account to the United States Government for all funds and property which had come into his hands as Agent for the Confederacy. Benjamin, being a friend, was employed as junior counsel. The case proceeded to trial before the English Court of Chancery, Vice-Chancellor James sitting. After the plaintiff's counsel had closed, and Kay, leader for the defendant, had finished his argument, it was apparent that the Vice-Chancellor was about to send the case for an accounting and reserve it for future consideration, a decision obviously fatal to the defendant. Thereupon Mr. Benjamin, the junior for the defendant, without ceremony, rose and in a stentorian voice not in accord with the quiet tone usually prevailing in a Court of Chancery said: "Sir, notwithstanding the some-

[3] United States of America v. McRae, LR 3 Ch App 79 (1867).

what offhand and supercilious manner in which this case has been dealt with by my learned friend, Sir Roundell Palmer, and to some extent acquiesced in by my learned leader, Mr. Kay, if Sir, you will only listen to me (repeating the same words three times and on each occasion raising his voice) I pledge myself you will dismiss this suit with costs."

Whatever astonishment may have been occasioned in the Court did not restrain the newcomer, and he went on for three hours without stopping, stoutly insisting that the United States could not approbate and reprobate, that it could not take the benefits of the agency without assuming the liabilities. A crowd assembled to witness this most unusual scene. The suit was dismissed with costs and the decision affirmed on appeal.

Benjamin's dramatic entry and rise to leadership at the English bar, with shadowed fortune, with dependent wife and daughter in Paris, and dependent sister in New Orleans, at the age of fifty-five and recently admitted to the British bar, brings to mind another great advocate, Lord Erskine, who likewise poor and with a dependent family, defied the Court in his first argument, and when asked how he had the temerity to do it, said: "I thought I felt my little children tugging at my coat and saying, 'Father, give us bread.' "

Perhaps the incident that is best remembered, or rather never forgotten in the English notices of Mr. Benjamin, occurred in the case of the *London & County Banking Co.* v. *Ratcliffe*,[4] on May 19, 1881. The case was on appeal to the House of Lords, and Mr. Benjamin, in his argument for the appellants, entered somewhat at length into the complicated facts of the case; and then, as was his custom, formulated in the most succinct style the propositions af law upon which he relied, and which it would be the purpose of his ensuing arguments to make good. On Mr. Benjamin's restating one of his propositions in slightly different terms, Lord Chancellor Selbourne remarked, "Nonsense." The remark was made in an undertone, and was not intended to be heard. It, however, reached Mr. Benjamin's ear. With heightening color he proceeded to tie up his papers. This accomplished, he bowed gravely to the members of the House, saying: "That is my case, my Lords." He turned and left the House. He could not be induced to return. His junior was permitted to finish the argument, but Lord Selbourne, not content with a private apology, took advantage of the next hearing of the cause to express publicly from the woolsack his regret that he had used the offending phrase.

In 1880 Mr. Benjamin was injured by falling from a moving tram car in Paris. Although he never fully recovered from these injuries, he resumed his practice.

While he was in Paris with his wife and daughter at Christmas time in 1882, his infirmity so increased and took such an alarming turn, that his physician absolutely forbade the attempt to resume work.

Returning to Paris after thus bidding adieu to the scene of his great and well-deserved triumphs, Mr. Benjamin seemed for a short time to recuperate. On May 6, 1884, he died at his house in Paris. Great was the sorrow manifested in England, deep was the grief felt in the distant state he had loved and served so well, when these somber tidings were known. An intellect profound and original in its conception, luminous in its exposition, slept to wake no more. The last chapter had been written of a career unique in its diversity and interest, and great and inspiring in its

[4] 6 App Cas 722 (1881).

accomplishments. His body lies in the great cemetery of Pere Lachaise.

It is indeed singular that Benjamin never wrote a story of his life, and still more singular that he desired none. Periodically he destroyed all his letters and papers, thus making it practically impossible for any adequate biography to be written. "No letters addressed to me will be found," said Benjamin about a year before his death, "among my papers when I die. I have read so many American biographies which reflected only the passions and prejudices of their writers, that I do not want to leave behind me letters and documents to be used in such a work."

But, notwithstanding his custom of destroying his old letters and documents, Mr. Benjamin's accomplishments remain as facts, a record that is not likely to have a parallel. Many men may have achieved either of his successful careers, but few have been able to establish the second on the ruins of the first.

Although Benjamin did not hold to the tenets of the Jewish faith, his race was throughout his career a target of attack upon him. It has been said that his relations with Jefferson Davis began through some objectionable remarks of this nature, made by Davis concerning him in the Senate in June, 1858, which led to Benjamin's challenging Davis to a duel. Davis withdrew the remarks and intimate relations of mutual respect and esteem began. More generally is accepted the statement that in the early fifties he was taunted by a distinguished adversary, a senator from Kentucky, about his faith, when he was referred to in the open Senate as "that Jew from Louisiana." Benjamin promptly replied: "It is true that I am a Jew, and when my ancestors were receiving the Ten Commandments from the immediate Hand of Deity, amidst the thundering and lightning of Sinai, the ancestors of my opponent were herding swine in the Forest of Great Britain."

Benjamin's views on slavery did not represent those of the majority of his race, but he is generally regarded today among the Jews as the greatest statesman, orator and lawyer American Jewry has produced, in spite of his identification with the "Lost Cause."

For rich variety of experience, for the lessons of unflinching courage, and steady cheerfulness in the face of disaster, Benjamin's life is most remarkable. Simple in his own habits and tastes, he cared for money only to use it for those he loved. Fond of the refinements of society, especially literature, and as he said, really by nature indolent, "loving to bask in the sun like a lizard," he had willingly sacrificed his only pleasures and ease for those he loved.

The lesson that can be drawn for lawyers from his life is that success in the practice of law waits patiently upon anyone who is prepared to make the sacrifice, and who has that infinite capacity for work, which after all is said and done, is genius, in the law or out of it.

"The atmosphere of his life was adversity, and the keynote of his success was work."

RECEIVER

"A receiver is a gun that is a good deal easier to fire off than it is to control after it is fired."—JUSTICE HOLMES.

CLEMENCY IN THE UNITED STATES ARMY

By MAJOR ABRAM N. JONES, J.A.G.D.

(Reprinted from the March 1942 Issue of The Reserve Officer.)

THE United States Army is guided by several army regulations and policies in addition to customs of the service in connection with the enforcement of discipline and punishment. These regulations, policies and customs of the service determine how and when clemency may be extended to offenders who violate the Articles of War. A special section is designated in the Office of The Judge Advocate General in Washington, D. C., known as the Military Justice Section, to deal with court-martial cases and military justice. In this section clemency is very carefully considered. It is the purpose of this article to show how frequently and judiciously clemency is extended. It is in fact, one of the necessary factors to be considered in connection with good morale, effective discipline and just punishment.

Clemency is a broad term and may be used in various ways. It is a phase of the pardoning power exercised in varying degrees according to method employed and the circumstances involved.

As the Chief Executive, the President of the United States is vested with supreme authority to pardon offenders irrespective of the offense committed except in cases of impeachment.[1] As the administration of the United States Army is under the direct control of the President as Commander-in-Chief, the control of military offenders is more readily exercised through officers in the Army.

All persons in the military service are subject to military law and to trial by court-martial.[2] The maximum punishment for offenses committed by military personnel whether purely military offenses or otherwise, is fixed by the President.[3] Clemency also is determined by the President through the Adjutant General of the Army and, where circumstances seem to warrant it, by and with the advice of The Judge Advocate General. Military prisoners in the disciplinary barracks, are under the control of the Adjutant General.[4]

The extension of clemency, however, begins in the Army with the company commander who has authority to administer minor punishments under Article of War 104. The Articles of War are enacted by Congress for the control and discipline of the Army under the Constitution of the United States.[5] Violation of the law set forth in any article of war may subject the offender to trial by a summary, special or general court-martial.[6] Practical clemency is extended in the designation of just which court should try a soldier. Only a general court-martial can adjudge dishonorable discharge of an enlisted man or dismissal of an officer from the Army.[7]

Officers and enlisted men who commit serious offenses are tried by general courts-martial, the military tribunal of highest trial jurisdiction. Many safeguards are given the accused. An impartial investigation must be made by an officer of the Army before the charges can be re-

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2 U. S. Constitution, Art. I, Sec. 8 cl. 14-15.
3 Manual for Courts-Martial, 1928, Chap. XXIII, par. 104c.
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ferred for trial.[8] Evidence of witnesses must be taken and reduced to writing. The accused may make a statement or cross-examine the witnesses.[8] An experienced lawyer then passes on the sufficiency of the charges at staff headquarters before any action is taken.[8] Should any reason appear for trying the case in a lower or special court-martial, clemency is exercised by recommending such action or the whole set of charges may be disapproved for legal insufficiency, lack of proper evidence or many other reasons.

When any person is tried by general court-martial, he is assigned a defense counsel and assistant defense counsel and may even select an additional personal defense attorney if he wishes.[9] He is tried by a court composed of officers, never less than five, who are familiar with military life and customs and probably are much more impartial and intelligent than the average jury.[10] He cannot be required to testify against himself and cannot even plead guilty until a written record is made of the fact that his rights were fully explained to him by the court.[11]

Assuming that a soldier is convicted and sentenced, the sentence is not operative, even with a plea of guilty, until approved by the Commanding Officer who appointed the court, who must refer it for advice to his staff judge advocate.[12] The staff judge advocate may consider the sentence too severe and recommend clemency by the remission or reduction in the term of imprisonment. The Commanding Officer must approve or disapprove such recommendation.[12]

All general court-martial cases come to the Office of The Judge Advocate General for review as to legal sufficiency.[13] Here again clemency may be recommended by The Judge Advocate General when the sentence still seems too severe. The legal sufficiency of the sentence, however, is finally and definitely determined in this instance. Any clemency extended thereafter cannot be based on this factor.

All long confinement cases are reviewed within six months by the Adjutant General[14] and in some cases referred to The Judge Advocate General for remark and recommendation relative to the possible extension of clemency. The record is again read and competent and experienced officers in the Office of The Judge Advocate General pass on the case relative to clemency. Each year thereafter, on a certain day the case is again reviewed by the Adjutant General's Office.[15] The Adjutant General's Office considers the prison record and all psychiatric and sociological data relative to the general prisoner.[16] If the sentence is for five years or more and the circumstances seem to warrant opening the case, it is again referred to The Judge Advocate General for remark and recommendation.[17] Thus clemency may be extended any year that the military offender is confined.

The consideration of clemency by The Judge Advocate General, in addition to the legal aspect, involves many factors, a few of which may be noted:

(a) Age.
(b) Mental status.
(c) Physical condition.
(d) Home record.
(e) Military record.
(f) Conduct in confinement.
(g) Condition of family or dependents.

[8] A.W. 70.
[9] A.W. 11 and A.W. 17.
[10] A.W. 4.
[11] A.W. 21 and A.W. 24.
[12] A.W. 46 and 47.
[13] A.W. 50½.
[14] AR 600-375 16 (b).
[15] AR 600-375, 16 (*b*).
[16] AR 600-395, Par. 13.
[17] Memo of Sec'y of War, Nov. 11, 1920.

CLEMENCY IN THE UNITED STATES ARMY

By MAJOR ABRAM N. JONES, J.A.G.D.

(Reprinted from the March 1942 Issue of The Reserve Officer.)

THE United States Army is guided by several army regulations and policies in addition to customs of the service in connection with the enforcement of discipline and punishment. These regulations, policies and customs of the service determine how and when clemency may be extended to offenders who violate the Articles of War. A special section is designated in the Office of The Judge Advocate General in Washington, D. C., known as the Military Justice Section, to deal with court-martial cases and military justice. In this section clemency is very carefully considered. It is the purpose of this article to show how frequently and judiciously clemency is extended. It is in fact, one of the necessary factors to be considered in connection with good morale, effective discipline and just punishment.

Clemency is a broad term and may be used in various ways. It is a phase of the pardoning power exercised in varying degrees according to method employed and the circumstances involved.

As the Chief Executive, the President of the United States is vested with supreme authority to pardon offenders irrespective of the offense committed except in cases of impeachment.[1] As the administration of the United States Army is under the direct control of the President as Commander-in-Chief, the control of military offenders is more readily exercised through officers in the Army.

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(h) Mitigating circumstances.

(i) Evidence bearing on the charge of which found guilty.

In addition, the Adjutant General's Office has several other methods of releasing general prisoners confined in the Disciplinary Barracks, Penitentiaries and Reformatories which may be briefly summarized as (a) restoration to duty (restricted generally to offenses not involving moral turpitude),[18] (b) local parole,[19] (c) home parole,[20] (d) clemency on certain holidays under authority of the Secretary of War.[21] This latter method of release is no longer used.

Almost any person may request clemency consideration for an offender held as a general prisoner. The application always receives consideration even though refused.[22]

The Army has recently promulgated a new policy of clemency which has reduced the maximum punishment for purely military offenses one-half when there are no aggravating circumstances.[23] In addition it has established a far-reaching and outstanding policy of equalizing sentences for the same offense when there are no aggravating circumstances.[24] In connection with this subject attention is invited to the address by The Judge Advocate General, Major General Allen W. Gullion, made at Indianapolis, Indiana, on September 28, 1941, in which he stated:

"Mr. James V. Bennett, Director of the Bureau of Prisons, Department of Justice, who has been very helpful to the present Judge Advocate General in the latter's effort to harmonize all sentences whenever practical and to prevent the execution of harsh sentences, informs me that so far as he knows the Army affords the only example in American jurisprudence of effective procedure whereby sentences for approximately similar offenses are made reasonably uniform."

The state courts having criminal jurisdiction could well afford to study this policy. Riots in many state prisons have had as one factor the inequality of sentences in the *same* state for the *same* offense.

The Annual Report of the Secretary of War for 1940 shows certain facts relative to clemency. During the year 1940 there was a total of 2,589 general prisoners in custody. Of this number, 89 were granted home parole, 360 were honorably restored to duty and 354 had their sentences remitted. This indicates that almost one third of the entire total received clemency in one form or another, the total released being 803.

The Army is quite familiar with parole as a valuable method of extending clemency.[25] It has been in operation for many years. The Army method of extending probation is simple and direct. Soldiers confined in disciplinary barracks are first put in a disciplinary company for three months and then recommended for restoration to duty if their conduct merits it.[26] In order to establish eligibility for parole they are required to ask for it.[27] A general prisoner may ask for home parole when one third of his sentence has been served and provided he has served at least 9 months of his sentence.[27] If his dishonorable discharge has not been executed, it will be if he is released on

[18] AR 600-375, Par. 15 (h), AR 600-395, Par. 7.

[19] AR 600-395, Par. 9.

[20] AR 600-415, Par. 3.

[21] AR 600-395, Par. 11.

[22] AR 600-375, Par. 16.

[23] Letter of A.G. dated Jan. 22, 1941 (AG 250, 47).

[24] Address by The Judge Advocate General, Major General Allen W. Gullion before Junior Bar Conference of Am. Bar Association at Indianapolis, Ind., Sept. 28, 1941.

[25] AR 600-415, Par. 3, Sec. 1, Act of March 4, 1915 (38 Stat 1075); 10 USC 1457.

[26] AR 600-375, Par. 15 (h).

[27] AR 600-415, Par. 3.

parole.[28] However, the Secretary of War can permit a man to re-enlist in the Army even after a dishonorable discharge under certain circumstances.[29]

It is a high tribute to the efficiency of the present Judge Advocate General and the discipline and high morale of the Army that it now has the lowest peacetime court-martial rate in its history.[30] Shortly after General Marshall's address to the Army in October, 1940, The Judge Advocate General sent the following communication to all judge advocates:

"In view of the rapid expansion of the Army, I am most solicitous that no case be recommended for trial by General Court-Martial until it has had the most careful consideration of all facts involved including the nature of the offense, moral and psychological factors, and the salvage value of the offender. I am confident that the exercise by staff judge advocates of imagination, humanity and sound judgment, with attention to technical details only in cases in which law and justice demand it, will greatly assist in obtaining results which attest the wisdom of Congress in adopting selective service as a peacetime method of personnel procurement."

The result has been most encouraging, indicating on July 1, 1941, that the general court-martial rate is now but 4½ per thousand.

In many cases years after dishonorable discharge from the Army a man may wish to regain his civil rights and make application for a pardon to the President of the United States. These cases are referred to The Judge Advocate General for remark and recommendation. Clemency may thus be extended on the recommendation of the Army by a Presidential pardon.[31] Occasionally the same result is sought by introducing a bill in Congress for the benefit of some person formerly a soldier or officer. These bills are immediately referred to the War Department for remark and recommendation and are forwarded to the Office of The Judge Advocate General. Clemency may be extended to a man by action of Congress, with the recommendation of the Army, many years after the offense was committed.

It is difficult, therefore, to imagine any method by which any system of military law could be administered with greater clemency and consideration than that used by the Army of the United States.

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[28] AR 600-415, Par. 3 (d).

[29] Par. 7, Sec. 2, Act of March 4, 1915 (38 Stat 1085) 10 USC 1457.

[30] Address by The J. A. G., Major General Allen W. Gullion, before Junior Bar Conference of Am. Bar. Asso. at Indianapolis, Ind., Sept. 28, 1941.

[31] U. S. Constitution, Art. II.

In Blake v. Stevens (1864) 4 F & F 232, 176 Eng Reprint 544, it was said by Cockburn, C. J.: "As, unfortunately, the reports which contain the various decisions of our numerous courts are only to be found scattered over hundreds upon hundreds of volumes if it were not for the assistance of textwriters, who from time to time give a summary of the decisions which have been pronounced, and arrange them in such way that by that means they can be ascertained and studied, I do not know where we should find ourselves; our law would be a chaos of confusion. It is bad enough as it is, but it would be a thousand times worse if it were not for the labors of those who report in our courts, and those who afterwards embody in their work the united labors of the bar and the bench.

PLEADING IN VERSE

By THOMAS J. UNDERWOOD
of the Lancaster Bar

(Reprinted by permission from the Sept. 1943 issue of the Ky. State Bar Journal)

ANNIE B. TRUMBO, a colored resident of Lancaster, had been a faithful servant in our home at Lancaster for several years. Her husband was also in my employ, and they made their home only a short distance from mine. Thus I had every opportunity to learn and know of the marital woes of this unhappy couple and I was not permitted to overlook any of those opportunities. All unhappy incidents were dinned into my ears. I had no choice other than to listen, leave home, or get rid of a much needed servant, and my better judgment told me to listen.

One day Annie came to my office with the request that I write her a "writ of vocement." She said she was tired of that "wuthless nigger" and wanted to rid herself of him. She didn't need to state facts, I knew them by heart. When she explained that she had no money, the thought occurred to me that I might do a bit of charity practice, serve my client, and afford a bit of amusement to myself and the bar at the same time. I proposed that if she would pay the cost and permit me to write the petition in verse that my work would be free. She replied that so long as she got a "voce" she didn't care how I got it.

I prepared the petition in verse and filed it. I tried to portray her married life, habits, and disposition, yet I was compelled to state the required allegations. This I did with sufficient clarity to make the petition stick in court. Proof was taken and the case was submitted. When submitted the court remarked, "I have been hearing about this case and the court is going to take his own poetic time in considering it." Amid smiles and winks from members of the bar he took the papers home for study.

I had also prepared a judgment in verse but, since our judge is a bachelor and a very serious-minded man, I concluded that I had better tinker with him no longer and submitted the usual judgment which was approved.

The petition is as follows:

GARRARD CIRCUIT COURT

ANNIE B. TRUMBO, ... *Plaintiff,*

vs. PETITION IN EQUITY

EBB TRUMBO, ... *Defendant.*

Comes the plaintiff that she may show,
How full has been her cup of woe,
She fell in love as all girls can
And Ebb Trumbo was the man.

Nineteen-hundred-nineteen was the year
That the Preacher and Ebb did appear,
And there with sacred vows he swore
To love and cheer for evermore.

Annie B. Trumbo is my name,
I'm sorry now that it's the same
But at the time of marriage tie,
We thought our love would never die.

For six months then some more
He cursed, abused, ripped, and swore.
I consider now that I am lucky
I live in Garrard, State of Kentucky.

Made it my home for over ten years,
Though life was borne with many tears
All the charges which I make
Was committed within said State.

And within the last five years
All was done as it appears
And all those days of cruel strife
I made defendant a loving wife.

At first his love was fresh and strong,
I was "his light, his sun, his song."
'Twas all too short, his life grew cold
And he began to fret and scold.

And next came blows and harsh abuse
And cruel licks without excuse.
No meat and bread did he provide
Nor clothes my nakedness to hide.

It's not for spite this charge I bring
Nor lack of love or anything
Except I want him free for life,
And let me live without such strife.

Six years ago, a little more,
He left me naked, hungry, poor,
Deserted me and ran away
And so continues to this day.

No loss of goods is here supplied
Because when Hymen's knot was tied
And ever since, alas, alack,
We carried them upon our back.

My lawyer, in whom I trust
Knows my cause is very just,
He'll plead my cause before this court
And proof I'll make for my report.

But Oh, that Judge who has never had
Such things in life to make him sad,
As sometimes come in married life
To mar the love of man and wife,

I hope he'll lay all prejudice aside
And scan our lives both far and wide,
Then he'll render a rule so just
That man and wife will always trust.

I'm not tired of married life,
I live to love, and not for strife;
I only wish I had a dove
That loved as hard as I can love,

We'd make our home a heaven of rest
With happy children in a lover's nest;
Our aims and hopes would always be
For love and happiness of all us three.

And this plaintiff will ever pray
The officers will get all their pay,
Though Ebb may growl about the cost
A righteous cause is never lost.

She therefore prays for the knot
The Preacher tied, undone, forgot,
She prays that by the laws of force
The court will grant a full divorce.

And all other things that's fair and right
The court will grant with all his might
If it appears from what is said
The cause is just as has been plead.

T. J. UNDERWOOD,
Attorney for Plaintiff.

HE WELCOMED FORECLOSURE

(Contributed by J. S. Simmons, Hutchinson, Kans.)

"J. S. SIMMONS, Hutchinson, Kans., attorney who is named as a defendant in one of Reno county's pending tax foreclosure suits, has filed a separate answer but he does not propose to throw a monkey wrench into the proceedings. In fact, he hopes the sheriff may have "a darn sight more luck in selling said lots than the defendant has had."

In his answer, filed yesterday, Simmons admits that he is owner of the property listed, lots 17 and 18, block 11, Shunk's second addition, and that the taxes are in default.

More Than Lots Worth

"Defendant does not know and therefore does not admit that the amount alleged as taxes is correct, but does admit that the amount due on said real estate as taxes is a plenty and vastly more than the lots are worth, and to the best of his knowledge and belief, based on long experience, he alleges that said amounts are more than said lots ever were or ever will be worth," the answer reads.

Simmons goes on to admit that the

amount of the taxes, whatever it may be, is a lien on the lots, "but further alleges, without attempting to fix the blame therefor, that said taxes are confiscatory."

Full Consent Given

The concluding paragraph of the answer:

"Defendant further admits that an order directing the sheriff to sell said lots is proper and that he willingly consents to said sale since this defendant has tried for several years to sell said lots and cannot do so, and further defendant says not as he has nothing else to say."

THE LAST LAUGH

(Contributed by W. C. Rodgers, Nashville, Ark.)

A COUNTRYMAN in southwest Arkansas got into a "squabble" with a neighbor over some personal property and hied himself to the justice of the peace with the view of asserting his rights in a court of justice. The circumstances were fully detailed to His Honor who proceeded to "fix up the papers" and, of course, it is assumed that he fixed them up so they would stick. Process was duly issued and served. Right here business began to pick up for the defendant did not object to a lawsuit at all. He forthwith proceeded to the county seat and engaged the best lawyer he could find. After hearing the facts the lawyer advised him he had a good case, thus confirming his own ideas. The day for trial rolled around. The whole countryside was on hand. In the eyes of his neighbors the justice of the peace was regarded as the very oracle of the law, all of which was pleasing to his judicial dignity. The case was called and the plaintiff in his crude, clumsy way presented his evidence and argument. He had no lawyer and needed none. The counsel for the defendant introduced his evidence and argued the cause with great learning and read to His Honor, in support of his contention, a decision of the supreme court of Arkansas squarely in point. But in doing so he unfortunately referred to it as the opinion of the court. This gave the alert and sagacious justice a loophole which he probably wanted and he triumphantly met the argument of the town lawyer with the assertion that the authority relied on was merely the *opinion* of the court and amounted to nothing; that if learned counsel had any *law* to that effect he would hear him. But the unlucky lawyer had played his last and best card—and lost. In his mortification and distress he could see but a faint gleam of hope through the corridor of appellate procedure. Of this he availed himself and the cause found its way to a court where the *opinion* of the supreme court was regarded as pretty good authority. He laughs best who laughs last.

—Nashville, Arkansas.

LEVANDER'S LAMENT

(Contributed by Robert V. Chrisman, Enterprise, Oregon.)

"A SHORT time ago," writes our contributor, "we sentenced a prisoner to a year in the County Jail for having practiced chiropractic medicine without a license so to do, and paroled him upon condition he leave the State of Oregon.

"A few days following such sentence being passed upon him I received the enclosed epistle."

PRISONER'S LAMENT

Say Mister D. A., now aren't you afraid
Lest the wrath of Jehovah should be on you laid,

For the sin of contumely covered with vice,
Impertinence practiced without thinking twice,
Duress on a man who's as poor as church mice,
A surgeon's ill fortune you've made!

Refrain:

Get out of town,
Before it's too late, my dear!
Get out of town,
We don't want you here!

Poor Levander healed with the help of the Lord
All those who real doctors could scarcely afford;
From city to city he wended his way
Existing on Love, since he never took pay,
A homeless great surgeon so many might say,
Yet "City of Joseph" was his bed and his board.

Refrain:

Get out of town,
Before it becomes your home;
Get out of town,
We'd rather you'd roam!

At laying of hands on the withered right arm,
Or cure by massaging a beast of the farm
He hadn't an equal—no one on a par
With his therapeutical cure for Catarrh
But he went, at long last, a "wee mite" too far,
"Laid hands" on a dollar and took grievous harm.

Refrain:

Get out of town,
Before it unhealthy gets!
Get out of town
Or you'll have regrets!

A fig for the man who inspects for the "Docs"
Poor Levander hopes that he takes Chickenpox;
For through and by means of the clues that he sifts
The "Quacks" he uncovers and the cloud that he lifts
From the eyes of the public; exposing the "gifts"
Of Fakers like Levander, their purses he locks.

Refrain:

S-o-o-o-o-o-o Get out of town,
We've got a new jailhouse here;
Get out of town
Or try it a year!

A BAD BARGAIN

(Contributed by C. Floyd Huff, Jr., Hot Springs, Ark.)

A CLIENT related the following facts: That several months ago in a town in New Mexico, he and a friend were "celebrating" and both were quite inebriated, and that while in the lobby of a hotel, they espied a beautiful young lady in her early twenties. The client's friend offered to wager that my client could not make a date with this beautiful young lady who was a stranger to both of them, and my client accepted the wager with the result that when he awoke the next day somewhat sober, he discovered that he had not only succeeded in making the date with this beautiful young lady, but had in fact married her, but that true to western tradition, inasmuch as he had entered into a bargain, he would make the best of it, with the result that he and his unknown bride lived together for several months, but one day while they were living at a hotel in Wyoming, he returned to the hotel after having been out for several hours and found the following letter from his wife awaiting him:

"Dewey:

When you receive this note I will be gone, don't try to find me, as it will be useless. Our marriage was all a fraud and it was only based on cheating and lies. 'After all you know without my saying, no young girl would marry you just for your looks. I have all the money you can give me now and I have found someone I really love. When I say man I really mean a man, not a worn out old fossil like you and someone with some pep, not just a shell. Do you think for one minute I would be seen with you when you have all your teeth pulled, my God I have some pride left. You have nothing left so this is the end.

So long sucker,
Lucille."

PAYMENT DELAYED

(Contributed by Mario B. Tomsich, Gary, Ind.)

"PAR. 4. That if the above said defendant was in error with payments, the same were not any fault of her own, but was caused by the acts of 'God' in taking a member out of her family by death, and that the defendant could not comply with payments during this period, which is a legal excuse recognized and inforced by the Courts; that the defendant so informed the plaintiff.

"Par. 5. WHEREFORE DEFENDANT PETITIONS AND PRAYS; the Court, that she be adjudged the lawful owner, of the Household articles in question, . . . that the period of sickness and death in the family be adjudged by the Court to be the Acts of 'God' . . ."

. The action is pending in a local Justice of the Peace Court and the above defense may prevail and judgment rendered as prayed above unless the Almighty intervenes and protects himself.

THE REPLY

(Contributor, T. R. White, Philadelphia, Pa.)

DEAR SIR in Reply to your letter of April 18 in Regard to the accident Feb 2 Where Do you get the ida Saying i was Responsible for the accadent Your man Runing 50 miles an our at a cross street Jam his Brakes his car sworng around catching my Right Front cut my Finder in two Bent my chassie I was stop still at that time and then Runing wile half Block Nock Down gas tank Pipe Run under a nother man car Daming it i am For Peace i am a Deacon of that church near ——— and ——— i had Just come out of the church and had Some of the memBers in my car i haven Even consulted my lawyer aBout the mater Dont start any thing that the lord Will not Be Please of

John Doe A.B.B.

(SEAL)

REQUIRED FORMS

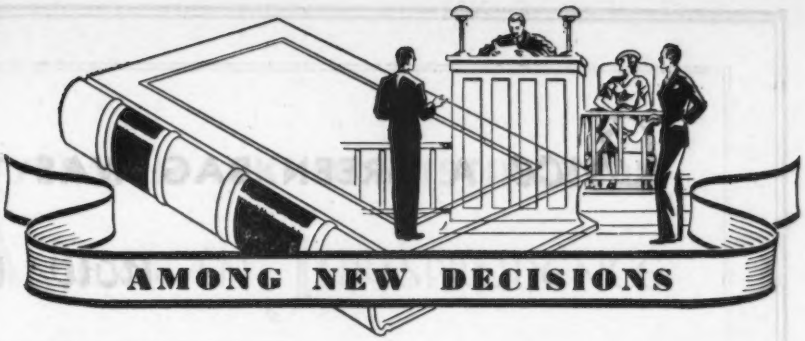
THE Bancroft-Whitney Co., of San Francisco, Calif., received the following letter over twenty years ago:

GENTLEMEN:

During my 20 odd years of practice I have assisted many a man and woman to remove the Matrimonial halter when it commenced to chafe, and in the past five years as judge, have tied the bolan that made two mortals happy or kept them in everlasting torment for the rest of their natural lives.

This you say has nothing to do with you, but listen! I have managed to do this after a fashion of my own and get away with it, but the other day a young couple made me look like a Steers Sawbuck garment after a hard shower, by asking me to perform the "ring ceremony." I did it, but probably not like anything that ever was in heaven or on earth, and now I come to what I want:

Have you any forms for the marriage ceremony, either with or without the ring ceremony, and if so, what is the cost?



AMONG NEW DECISIONS

Administrative Law — *sufficiency of findings.* In H. J. Laney v. Holbrook, 150 Fla 622, 8 So (2d) 465, 146 ALR 202, it was held that a statutory requirement that an order of an administrative board removing a person from public employment shall contain findings of fact is not met by a general finding of "guilty as charged," where the charges filed were couched in general language alleging general conclusions rather than specific statements of fact upon which such conclusions might be based.

Annotation: Necessity, form, and contents of express finding of fact to support administrative determinations. 146 ALR 209.

Attorneys — *client's settlement of cause of action.* In Slayton v. Russ, — Ark —, 169 SW (2d) 571, 146 ALR 64, it was held that under a statute providing that if a pending suit is settled without the consent of plaintiff's attorney, the Court shall, upon the attorney's motion, enter judgment for a reasonable fee, lack of merit in plaintiff's original cause of action is no defense to the attorney's motion to have his fee fixed.

Annotation: Merits of client's cause of action or counterclaim as affecting attorney's lien or claim for his compensation against adverse party, in case of compromise without attorney's consent. 146 ALR 67.

Attractive Nuisance — *jumping or falling.* In McHugh v. Reading Co. — Pa —, 30 A (2d) 122, 145 ALR 319, it was held that a railroad company is not liable for the death of a bright child six years and eight months old who lost her footing and fell as she started to descend from a bridge abutment the cornice of which bore a fanciful resemblance to an ornate chair, which was a lure to children.

Annotation: Liability, under attractive nuisance doctrine or related principle, for injury to children jumping or falling from nondefective and stationary object or structure reached by climbing. 145 ALR 322.

Automobiles — *infancy as affecting consent for use of.* In Lind v. Eddy, — Iowa, —, 6 NW (2d) 427, 146 ALR 695, it was held that infancy does not relieve the owner of a car from liability for injury done while it is being driven by another with his consent, under a statute providing that "in all cases where damage is done by any car by reason of negligence of the driver, and driven with the consent of the owner, the owner of the car shall be liable for such damage," an infant being capable of giving the "consent" required by the statute.

Annotation: Infant owner as within statute which makes owner of automobile responsible or creates a lien for injury or death inflicted by an-

Once A GREEN BAG WAS THWY

now it A

IN THE days of the "good Queen Anne" the lawyer carried a green bag, the forerunner of the modern brief case. The expression "he intends to carry a green bag" was frequently used to express the thought that a young man was going to study law. An early dictionary of the times defines a green bag as a lawyer.

LAWYER'S CENTURY

At one time the carrying of a green bag was restricted to the more distinguished members of the profession. King's counsel would reward a junior for meritorious work in 17th presenting the fledgling with a green bag. Unless given that

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other operating automobile. 146 ALR 701.

Automobiles — *"share-the-ride" arrangement.* In Everett, Appt. v. Burg, 301 Mich 734, 4 NW (2d) 63, 146 ALR 639, it was held that host and guest relationship, within the law which makes gross negligence a condition of liability for injury to or death of a guest, rather than that of carrier and passenger for hire or joint adventure, exists between the driver and one riding in an automobile under an arrangement between six fellow employees whereby five of them, including both persons in question, furnished transportation in alternate weeks, the sixth, who had no car, having agreed to pay a specified sum per week for transportation.

Annotation: Host and guest relationship, within statute or rule regarding liability of driver or operator of motor vehicle for injury to guest, as between parties to "share-a-ride" arrangement. 146 ALR 640.

Automobiles — *when guest relationship terminates.* In Bragdon v. Dinsmore, — Mass —, 45 NE (2d) 833, 146 ALR 680, it was held that the host-guest relationship created where one rides in another's automobile with the object of accompanying him to a beano party, having supper with him, and then driving home together afterward, is not terminated when, upon entering a parking station near the beano game, the guest gets out of the car in order to assist the driver to park, and is injured, through the driver's negligence, by being caught between the car and another parked car. The driver is liable for the injury only upon a showing of gross negligence.

Annotation: Commencement and termination of host and guest relationship within statute or rule as to liability for injury to automobile guest. 146 ALR 682.

Bonds — *surety's liability for wrongful payment which benefited city.* In Lowell v. Massachusetts Bonding & Insurance Co. — Mass —, 47 NE (2d) 265, 146 ALR 750, it was held that a city treasurer or other fiscal officer and the surety on his bond are not liable in respect of payments, made in a manner violating the procedure prescribed by statute in respect of payments, if they were made in discharge of valid obligations of the municipality; but they are chargeable with payments so made on claims not enforceable against the city, although it received material benefit of full value from the claimants.

Annotation: Liability of public officer and his sureties in respect of payments made without compliance with procedure prescribed for payment of claims. 146 ALR 762.

Chattel Mortgage — *omission of amount.* In Tobin v. Kampe, 132 F (2d) 64, 145 ALR 366, it was held that failure of a chattel mortgage, which specifies the amounts of twelve of the thirteen notes secured, to state the amount of the thirteenth, which is otherwise sufficiently identified, does not deprive the record thereof of effect as constructive notice which will sustain the lien of the mortgage for the actual amount of the note as against the trustee in bankruptcy.

Annotation: Omission of amount of debt in mortgage or in record thereof (including general description without stating amount) as affecting validity of mortgage, its operation as notice, or its coverage with respect to debts secured. 145 ALR 369.

Civil Service — *preference to soldiers.* In Klatt v. Akers, — Iowa —, 5 NW (2d) 605, 146 ALR 808, it was held that a senior examiner in the office of State Auditor is in a position of "strictly confidential relation," so as to be subject to discharge without

a hearing, within a provision of a soldiers' preference law excepting such a position from the operation of the law, where the duties of such senior examiners, working in secrecy with their supervisors, are to investigate the financial condition of municipalities, to examine the books and accounts of municipal officers, to make reports thereon to the state auditor, and to uncover defalcations and embezzlements.

Annotation: When position deemed confidential within contemplation of soldiers' preference and civil service laws. 146 ALR 818.

Conflict of Laws — *wife's action against husband.* In Coster v. Coster, 289 NY 438, 46 NE (2d) 509, 146 ALR 702, it was held that the right of a wife to maintain a suit against her spouse for personal injuries is a substantive right, constituting a part of her cause of action, and not a mere matter of remedy, for purposes of determining the applicable law.

Annotation: Conflict of laws as to right of action between husband and wife or parent and child. 146 ALR 705.

Constitutional Law — *coercion by employer.* In National Labor Relations Board v. American Tube Bending Co. 134 F (2d) 993, 146 ALR 1017, it was held that a letter sent by the president of a corporation to its employees a few days before, and a speech made by him on the eve of, an election ordered by the National Labor Relations Board, is, under the decision of the United States Supreme Court in National Labor Relations Bd. v. Virginia Electric & P. Co. 314 US 469, 86 L ed 348, 62 S Ct 344, insufficient to support a finding by the Board of coercion, and, even if prejudicial, is justified under the employer's constitutional right of freedom of speech, where the letter and speech, though showing a preference by the employer for no union whatever, stated that it was willing to abide loyally by the results of the election, there was no intimation of reprisal against those who thought otherwise, and the argument, temperate in form, was made merely that a union would be against the employees' interests as well as the employer's, and that the continued prosperity of the corporation depended on going on as they had been.

Annotation: Unfair labor practice, within National Labor Relations Act or similar state statute, predicated upon expressions of opinion or statements by employer concerning labor unions. 146 ALR 1024.

Constitutional Law — *regulating qualification for liquor license.* In Francis v. Fitzpatrick, 129 Conn 619, 30 A (2d) 552, 145 ALR 505, it was held that the statutory requirement that an applicant for a license for the sale of intoxicating liquor must be an elector of the town does not violate the constitutional guaranty of equal protection of the law, since the conditions essential to one's status as an elector have a substantial relation to the attributes which qualify one to receive such a license; and the requirement is not arbitrary, unreasonable, or discriminatory.

Annotation: Provisions of statute regarding personal qualifications necessary to entitle one to license for sale of intoxicating liquor, as denial of equal protection of laws. 145 ALR 509.

Constitutional Law — *regulating sale of religious books.* In Murdock v. Commonwealth of Pennsylvania, 319 US 105, 87 L ed 1292, 63 S Ct 870, 146 ALR 81, it was held that an ordinance imposing a flat license tax, not a mere nominal fee, for the privilege of canvassing or soliciting within a municipality is, when applied to religious colporteurs engaged in the

dissemination of their religious beliefs through the sale of books and pamphlets by solicitation from house to house, an unconstitutional invasion of the rights of freedom of religion and of speech and press.

Annotation: Constitutional guaranty of freedom of religion as applied to license taxes or regulations. 146 ALR 109.

Corporations — *liability on lease by subsidiary.* In Weisser v. Mursam Shoe Corp. 127 F (2d) 344, 145 ALR 467, it was held that a parent corporation and its sole stockholders are liable for damages for breach of a lease executed by a subsidiary corporation that was organized for the purpose of taking the lease, was a mere tool of the parent corporation, entirely dominated by it, was operated as a division of the parent's business, and was deliberately kept judgment-proof in order to obtain the benefits of the lease without assuming any obligation, where the stockholders represented to the lessor that they and the parent corporation were responsible under the lease and that the subsidiary was to operate a store on the leased premises.

Annotation: Liability of holding corporation on contracts of subsidiary. 145 ALR 475.

Damages — *mental anguish of pregnant woman.* In Fehely v. Senders, — Or —, 135 P (2d) 283, 145 ALR 1092, it was held that apprehension by a pregnant woman, injured in her person by the negligence of another, that harm may result from the injury to her unborn child is such mental anguish as may be properly taken into account in estimating her damage, notwithstanding that subsequent event (birth of a normal baby) proved the apprehension to be groundless.

Annotation: Mental distress from pregnant woman's apprehension or realization of injury to or loss of child, as element of damages in action for personal injury. 145 ALR 1104.

Divorce — *Power of court over life insurance.* In East v. Collins, — Miss —, 12 So (2d) 133, 145 ALR 517, it was held that a court by virtue of its express retention of jurisdiction of the terms of alimony and the statute in that regard may, upon the remarriage of the former wife, require her to reassign to the former husband a policy of insurance on his life which he had been required to assign to her as security for payment of alimony.

Annotation: Propriety and effect of provision in decree in divorce suit in respect of policy of insurance on life of husband. 145 ALR 522.

Eminent Domain — *deductions of benefits.* In Prudential Ins. Co. v. Central Nebraska Pub. P. & Irrig. Dist. 139 Neb 114, 296 NW 752, 145 ALR 1, it was held that there are two elements of damage involved in a condemnation action: first, the market value of the land actually appropriated; second, the damages suffered by diminution in value of the remainder of the land, less special benefits received.

Annotation: Deduction of benefits in determining compensation or damages in eminent domain. 145 ALR 7.

Evidence — *safety of construction work.* In Kenney v. Washington Properties, Inc. — App DC —, 128 F (2d) 612, 146 ALR 1, it was held that safety or usualness of window construction in a hotel room is not proper subject of expert or opinion testimony in an action for death of a hotel guest's invitee, alleged to have fallen through an open casement window.

Annotation: Safety of condition, place, or appliance as proper subject of expert or opinion evidence in tort actions. 146 ALR 5.

Group Insurance — *termination of employment, effect.* In Szymanski v. John Hancock Mutual Life Insurance Co. 304 Mich 483, 8 NW (2d) 146, 145 ALR 947, it was held that the provision of a policy of group insurance which gives a former employee after termination of employment, which by the terms of the policy terminates the insurance, an option to continue insurance upon application within thirty-one days and the payment of necessary premium, without any examination as to insurability, does not extend the coverage of the policy to a former employee who died during that period, without having made such an application.

Annotation: Policy of group insurance as covering death or injury after termination of employment but within period allowed by policy for application for new or continued insurance, or within period of grace provided for payment of premiums. 145 ALR 951.

Habeas Corpus — *denial of right to counsel as ground for.* In Wilcoxon v. Aldredge, 192 Ga 634, 15 SE (2d) 873, 146 ALR 365, it was held that a complaint that the defendant was not given the benefit of counsel, if sustained, presents a good ground for issuance of the writ of habeas corpus.

Annotation: Relief in habeas corpus for violation of accused's right to assistance of counsel. 146 ALR 369.

Income Taxes — *deductability of corporate salaries.* In Lydia E. Pinkham Medicine Co. v. Commissioner of Internal Revenue, 128 F (2d) 986, 145 ALR 827, it was held that although, as a general proposition, a determination by the directors of a corporation of the value of services rendered to it by its officers and directors is entitled to some weight in determining the amount deductible for compensation and salaries for income tax purposes, such determination is of no significance where the payments are made in accordance with the stockholding interests of each group of officers and directors, and not as a result of an objective determination of the value of the services rendered by them to the corporation.

Annotation: Deduction of salaries, commisssions, or bonuses to officers or employees in computing income tax. 145 ALR 834.

Insurance — *double indemnity excepting military service.* In West v. Palmetto State Life Insurance Co. — SC —, 25 SE (2d) 475, 145 ALR 1461, it was held that an exception, in a double indemnity provision of a life policy, of death while engaged in military or naval service "in time of war" is inapplicable to the death of a sailor by enemy action (the Japanese surprise attack on Pearl Harbor) on the day before war is actually declared.

Annotation: Validity, construction, and effect of provisions in life or accident policy in relation to military service. 145 ALR 1464.

Larceny — *distinguished from embezzlement.* In State v. La France, — Mo —, 165 SW (2d) 624, 146 ALR 529, it was held that an automobile salesman who obtains a truck from his employer upon the false representation that he has a cash customer for it, with the criminal intent at that time of converting the truck to his own use, cannot, where he afterwards sells the truck partly for cash and converts the cash to his own use, be convicted of embezzlement, under a statute punishing an agent who takes goods or money of his employer with intent to embezzle or convert them to his own use without the assent of the employer; since, in order to sus-

tain a conviction of embezzlement, as distinguished from larceny, the original taking must be lawful.

Annotation: Distinction between larceny and embezzlement. 146 ALR 532.

Libel and Slander — *defamation of dead person.* In Renfro Drug Co. v. Lawson, 138 Tex 434, 160 SW (2d) 246, 146 ALR 732, it was held that generally, defamation of a dead person does not give rise to a cause of action in favor of one related to him.

Annotation: Civil liability for defamation of dead. 146 ALR 739.

Libel and Slander — *privilege of judicial opinion.* In Murray v. Brancato, 290 NY 52, 48 NE (2d) 257, 146 ALR 906, it was held that the furnishing by a judge of a copy of his opinion containing defamatory statements, for publication, where he is not required by law to do so, is not within the absolute exemption from liability attaching to acts done by a judge in the exercise of his judicial function; and he therefore may be held liable if in doing so he acted maliciously and with intent to injure.

Annotation: Libel and slander: privilege as regards publication of judicial opinion. 146 ALR 913.

Mines and Minerals — *severance from tract.* In Jilek v. Chicago, Wilmington & Franklin Coal Co. 382 Ill 241, 47 NE (2d) 96, 146 ALR 871, it was held that the owner of land in fee simple may convey and grant to another the right to take or own oil and gas in the ground in and by a mineral deed without at the same time conveying the superimposed surface of the land.

Annotation: Severance of title or rights to oil and gas in place from title to surface. 146 ALR 880.

New Trial — *juror's impeachment of verdict.* In State v. Adams, 141 Ohio St 423, 48 NE (2d) 861, 146 ALR 509, it was held that the rule that affidavits or testimony of jurors will not be received to impeach their verdict unless evidence aliunde of irregularity in the deliberations of the jury or in the return of a verdict is shown has no application where such irregularity is due to the misconduct of an officer of the court.

Annotation: Admissibility of testimony or affidavits of members of jury to show communications or other improper acts of third person. 146 ALR 515.

Nuisances — *war production as defense.* In Godard v. Babson-Dow Manufacturing Co. — Mass —, 47 NE (2d) 303, 145 ALR 603, it was held that the defendant, lessee of the second floor of a building constructed for manufacturing purposes, is engaged in production of war munitions under a contract with the government, or under a subcontract, does not entitle him to denial of an injunction to abate a nuisance, at the suit of the lessee of the third floor, whose female operatives, engaged in production of army coats, are made uncomfortable and nervous resulting in some impairment of efficiency, by vibrations from a 25-horsepower electric motor, hung from ceiling beams, from which defendant derives power for the operation of approximately forty individual machines, it appearing that the method of conveying the power could be changed by installing individual motors for the several machines, although such change, unless gradually made, would involve serious delay in defendant's production.

Annotation: Use of property for production of war goods as affecting question of nuisance, and injunction to abate same. 145 ALR 611.

Physicians and Surgeons — *false imprisonment for insanity certificate.*

In Beckham v. Cline, – Fla –, 10 So (2d) 419, 145 ALR 705, it was held that an action for false imprisonment will lie against physicians appointed by a court to examine plaintiff who was alleged to be insane, where in violation of statute and the order appointing them, without examining her they made a report to the effect that they had examined her and found that she was insane, upon the basis of which report she was committed to the asylum for the insane, whereas she was in fact sane, since, notwithstanding their quasi-judicial powers, they were acting without jurisdiction in making the report without the required personal examination.

Annotation: Action for false imprisonment or malicious prosecution predicated upon institution of, or conduct in connection with, lunacy proceedings. 145 ALR 711.

Price Control – *meaning of "wholesaler."* In Henderson v. Burd, 133 F (2d) 515, 146 ALR 714, it was held that a manufacturer's selling agent is not a "wholesaler" or "jobber" within the meaning of a price schedule, promulgated under the Emergency Price Control Act of 1942 (50 USC Appx. §§ 901 et seq.), permitting wholesalers or jobbers of nylon hose to sell at an increase of 10 per cent over the manufacturers' prices.

Annotation: Constitutionality, construction, and application of Emergency Price Control Act. 146 ALR 718.

Proximate Cause – *violation of statute.* In Mississippi City Lines v. Bullock, – Miss –, 13 So (2d) 34, 145 ALR 1199, it was held that the violation of statute by stopping a bus so that it stood obliquely with the rear end nearer the center of the pavement than it would have been if a parallel stop had been made, is not the proximate cause of the death of a boy of twelve who alighted through the front door of the bus onto the shoulder of the road away from traffic and instead of waiting, as is customarily done by passengers when alighting, until the bus moved away, went around the end of the bus and out from its rear into the traveled highway, and was struck by an automobile, not under the carrier's control, which was proceeding at a high rate of speed in the direction opposite to that in which the bus was headed.

Annotation: Liability of motorbus carrier for death of or injury to discharged passenger struck by vehicle not within its control. 145 ALR 1206.

Res Ipsa Loquitur – *fall of board from building.* In Tallarico v. Autenreith, 347 Pa 170, 31 A (2d) 906, 146 ALR 520, it was held that where a pedestrian walking in front of a building being repaired is struck on the head by a board which, because of the way it fell, must have been thrown out of the building, this is prima facie evidence of a wilful or negligent act on the part of someone; but the burden nevertheless is upon the plaintiff to show that the defendant, either by himself, or through his employees or agents, had such exclusive control over the board that he must have been the one responsible for throwing it out of the building.

Annotation: Res ipsa loquitur as applicable to injury to person in street by fall of object in course of construction or repair of building. 146 ALR 523.

Schools – *modification of teacher's salary schedules.* In Greenway v. Board of Education, 129 NJ 461, 29 A (2d) 890, 145 ALR 404, it was held

that a repeal by a board of education of a provision of its salary schedule for increments from time to time does not, in the case of teachers who have not become entitled to an increment, constitute a reduction in salary within the provision of a teachers' tenure law forbidding reductions in salary except for just cause.

Annotation: Compensation of tenure teacher. 145 ALR 408.

Spendthrift Trust — *debt owing to testator.* In Re Chamberlin, 289 NY 456, 46 NE (2d) 883, 145 ALR 1314, it was held that where the trust created by will is a spendthrift trust the inference is that the testator intended that the beneficiary should enjoy the whole interest given him under the trust and that the amount of his indebtedness to the testator should not be charged upon his interest.

Annotation: Spendthrift trust provision as applicable to indebtedness of beneficiary to trustor, estate of testator, or trust itself. 145 ALR 1318.

Unemployment Compensation — *effect of self-employment.* In Dellacroce v. Industrial Commission of Colorado, — Colo —, 138 P (2d) 280, 146 ALR 745, it was held that one seasonably employed as a coal miner is co-owner with his wife of a farm on which he resides but which is operated by his wife and children without his participation or direction does not disqualify him, as a person customarily self-employed, from unemployment benefits during suspension of his employment as a miner.

Annotation: Construction and application of self-employment provisions of social security or unemployment compensation acts. 146 ALR 748.

Unemployment Insurance — *what amounts to misconduct.* In M. F. A. Milling Co. v. Unemployment Compensation Com. — Mo —, 169 SW (2d) 929, 146 ALR 239, it was held that the Unemployment Compensation Commission's finding that an employee's failure, before bringing suit in good faith against his employer in consequence of a misunderstanding about the effect of the Wage and Hour Law, to give notice to the employer of his intention to do so, and discuss his grievance with the latter, did not amount to "misconduct" within the provision of the act which disqualifies one from unemployment benefits for a period following his discharge for misconduct, is sufficiently supported by evidence that when the matter was discussed with the employer after suit had been filed no settlement was reached and that the employee's refusal to dismiss the suit caused his discharge, it further appearing that the conference after the suit was the first one in the eleven years of the claimant's employment.

Annotation: What amounts to "misconduct" which precludes benefits under unemployment compensation act to discharged employees. 146 ALR 243.

Wills — *effect of failure of life estate on Rule in Shelley's Case.* In Lydick v. Tate, 380 Ill 616, 44 NE (2d) 583, 145 ALR 1216, it was held that the fact that a life estate, created by a will giving property to the testator's daughter "during her widowhood . . . to have and to hold for and during her natural life," and to go to her heirs "at her death or remarriage," is terminated during the testator's lifetime by the remarriage of his daughter does not preclude the operation of the rule in Shelley's Case, it being unnecessary that the life estate actually vest in order to make such rule applicable.

Annotation: Rule in Shelley's Case as affected by failure of life estate prior to operative date of instrument. 145 ALR 1227.

Annotations in Volume 146 A.L.R. on Legal Questions Arising Out of War Conditions

THE HUMOROUS SIDE

Pleading Concise. A law student sent a collect "wire" from college to his father as follows: "No mon. No fun. Your son."

His father, an old lawyer responded briefly, to wit: "That's sad. Too bad. Your dad."

Contributor: Francis X. Kirsch.
Fargo, North Dakota.

'Most All of Them Are. A realtor, A, a son of Bishop B, was trying to introduce himself to a wealthy man, C, who was deaf. C could not understand him and finally A shouted: "I'm a realtor, a son of the Bishop." C said: "'Most all of them are."

Contributor: F. W. Thomas,
Asheville, N. C.

A Change of Taste. When small, Johnny loved soldiers, and Mary was crazy about painted dolls. Now that they are grown, Mary loves soldiers and Johnny is crazy about painted dolls.—*Cosgrove's.*

Temptation. "Darling," cooed the lawyer's wife, "I've just read that a man out west exchanged his wife for a horse. You wouldn't exchange me for a horse, would you?"

"Never," he replied dutifully. "But I would hate to have anyone tempt me with a good car."—*Exchange.*

Double Talk. This story is told to illustrate the difference in English as spoken in England and in America.

Two ladies, mother and daughter, were riding in a crowded compartment of an English train. Among those standing were several American soldiers. The mother said to the daughter, "We will get off at the next station, and when we do, you follow me in exactly the same manner that I leave the car." When the train stopped the older lady backed down the step, keeping her face toward the American soldiers. The daughter dutifully did likewise.

After they were safely on the station platform the daughter asked, "Now just why did you descend backwards?"

The mother replied, "Didn't you hear those American soldiers say that when those two dames left the train that they were going to pinch their seats?"

—*Ky. Bar Journal.*

Respect for Education. Theodore Johnson in *Yank* says this is how his duty sergeant organized his platoon to police the grounds. He divided the platoon into three groups: college graduates, high school graduates and the others. Then he bellowed out, "You college boys pick up cigarette butts; you high school graduates pick up match sticks. The rest of you dumb guys stand around and observe and try to learn something."—*Postage Stamp.*

The Cause. "An embibing, stuttering man being brought by a Constable before a Magistrate, could only stammer, stutter and spew around.

"The Magistrate inquired of the Constable what was the man charged with.

"The Constable replied: He must be charged with soda water."

Contributor: John S. Bowman,
Orangeburg, S. C.

The Unbeliever. Conductor: "Can't you read that sign? It says 'No smoking'."

Sailor: "Sure, mate, that's plain enough, but you've got a lot of dippy signs here. One of 'em says 'Wear Nemo Corsets,' so I ain't payin' attention to any of 'em."

—*Cosgrove's.*

Compromise. A lawyer's wife ran into an embankment and bent a fender. It worried her. She went to a garage and asked the mechanic:

"Can you fix this fender so my husband won't know how it was bent?"

The mechanic looked at the bent fender and then at her, and said:

"No, lady, I can't. But I'll tell you what I can do. I can fix it up so that in a few days you can ask your husband how he bent it."—*Exchange.*

Two-Timed. "Were you annoyed because I sharpened a pencil with your razor?" asked the attractive wife.

"Twice," replied the patient husband. "After I had given up trying to shave, I tried to write with the pencil."

—*Exchange.*

Unreciprocated Greeting. The following was recently received from a man confined in the State Hospital at Parson, Kansas. It read as follows:

"Dear Sir:

Please come down here and get me out as I want out very bad. If you will do this for me I will do the same for you.

Contributor: Walter F. McGinnis,
El Dorado, Kansas.

Two Little Morons. Two little morons each had a horse. They wanted to discover a way to tell the horses apart. So one moron cut the ears off his horse. The next day the other little moron's horse bumped into a circular saw and got his ears cut off.

So the morons couldn't tell their horses apart again. One moron cut the tail off his horse and the next day the other horse backed into a machine belt and got his tail cut off.

So again the morons couldn't tell them apart. They didn't know what to do; they just had to tell the difference. So they decided to measure the horses to see if there was any difference in size—and sure enough they found out that the black horse was 3 inches taller than the white horse.

—*The Postage Stamp.*

Blue Laws New Haven Colony

"Married people must live together or be imprisoned."

"No one shall travel, cook victuals, make beds, sweep house, cut hair or shave on the Sabbath day."

"No woman shall kiss her child on the Sabbath or on fasting days."

"If any man shall kiss his wife or wife kiss her husband on the Lord's day, the party in fault shall be punished at the discretion of the court magistrate."

"Every male shall have his hair cut round, according to a cup."

"No one shall read common prayer, keep Christmas or saint's days, make mince pies, dance, play cards or play any instrument of music, except the drum, trumpet or jews harp."

"No one shall run on the Sabbath day or walk in his garden or elsewhere, except reverently to and from meeting."

"Whoever brings cards or dice into this dominion shall be fined £5."

"A debtor in prison, swearing he has no estate, shall be let out and sold to make satisfaction."

"No gospel minister shall join people in marriage. The magistrate only shall join people in marriage, as he may do so with less scandal to Christ's Church."

"The Sabbath shall begin at sundown on Saturday."

Contributor: Noah Goldstein,
New York City.

Explorers. Everything about the flying corps was interesting to the American visitor, who asked an endless string of questions.

"Say," he exclaimed at last, "how come you have so many Scotsmen among your fliers?"

The guide, a bit fed up, snatched at the chance.

"Well, sir, since the Scots learned that every cloud has a silver lining, we just can't keep them out."—*Exchange.*

In-fore-may-shun, Plee-yuzz. Our spy at the 'phone company just telegraphed us to report that a subscriber recently became more than a little chagrined at getting the wrong number three times.

In an explosion of exasperation, he shouted at the operator:

"Look, sister, am I crazy or are you?"

"I am sorry, sir," came back the smooth, institutional voice, "we do not ha-uv that in-fore-may-shun."—*The Postage Stamp.*

Too Late. Leader: "I was kissing our girl soloist last night to beat the band."

"You didn't beat the band. They've been kissing her for weeks."—*Exchange.*

Test of Friendship. Testimonial dinners like this one aren't nearly as great a strain on friendship as the test imposed on his intimates by a New Hampshire man who recently died. Without relatives, he left behind him two sealed letters, one to his lawyer to be opened after the funeral, and the other to an undertaker, setting forth all the specifications for that event.

In due time, the funeral took place—at four o'clock in the morning in accordance with the undertaker's instructions!

Just four friends managed to drag themselves out of bed to attend the funeral at that unearthly hour. But they were well repaid for their trouble.

For, when the lawyer's letter was opened, it was found to provide for an equal division of the estate of the deceased among those who attended his funeral.

The value of the estate was $400,000.

—*Nashua Cavalier.*

The Perfect Alibi. "There's someone creeping upstairs."

"What's the time?"

"Half-past three."

"Well, thank goodness, it's not me this time."—*Exchange.*

Excuse It, Please. Painfully prophetic is this bit of Ogden Nashiana written a long time ago.

How courteous is the Japanese
He always says, "Excuse it, please."
He climbs into his neighbor's garden
And smiles, and says, "I beg your pardon;"
He bows and grins a friendly grin,
And calls his hungry family in;
He grins, and bows a friendly bow;
"So sorry, this my garden now."
—*The Postage Stamp.*

War Terminology. Little Boy (reading item from Manchuria): "What does it mean here by 'seasoned troops,' dad?"

Dad (immediately): "Mustered by the officers and peppered by the enemy."
—*Exchange.*

Blackout Queen. One of our girl friends in Oklahoma says she's a "knockout in a blackout, but a fright in the light." Well, it was news to me. I hadn't heard that one.
L & R News.

Encumbrances. Our contributor represented A who sold a house to H. A tendered H a deed conveying a good title. H refused to pay because the house was occupied by a tenant which prevented his taking possession. The writer, who had not seen the sale contract, prepared by a realtor, said, "that's no ground on which to justify you in refusing to pay." H said the sale contract provides that the property shall be free of encumbrances, "including the tenant."

Contributor: F. W. Thomas,
Asheville, N. C.

Rulers of The Cards. Two good lawyer friends met at motion hour in the court room. Each prided himself on his dignity and made courtesy one of his major aims. One had the appearance of a sleepless night and his expression betrayed his mental dejection. His friend inquired the reason for his "blues," to which he replied, "I have discovered that one can place an unwarranted faith in the sovereign power of three queens."—*Ky. Bar Ass'n Journal.*

Lady, Sturdy. What with the labor shortage and all, we have found someone who can replace at least twenty of your staff members, according to her ad in the Miami *Herald.*

"LADY, sturdy, is looking for a new connection. Has had 50 jobs, among them being: Copyholder, proofreader, editorial assistant, editor, associate editor, managing editor, consulting editor, columnist, ghostwriter, copywriter, printing production manager, writer, cook, maid, dental and doctor's assistant, taxi dancer, dance instructor, tutor, night secretary, movie usher, salesgirl, press clipping bureau reader, laboratory technician, model, collaborator, publicity agent, mistress of ceremonies, florist, translator, factory worker. Well-groomed, well-dressed and well-mannered."—*The Postage Stamp.*

British Wit. Hitler and Goering went to Calais and stood looking sadly across the Channel towards England. Suddenly Goering said, "Adolph, I have an idea. When I was at school, I remember I learned a story about a man who divided the sea in order to enable his army to cross on dry land." Then he added doubtfully, "But I think he was a Jew."

Hitler, very excited and past caring whether the man was a Jew or not, sent immediately for a Rabbi. When he came, the Fuehrer asked him, "Is it true that a Jew once divided the sea, leaving dry land for his army to cross?"

"Certainly," was the answer. "It was Moses."

"Where is he now?"

"I am afraid he has been dead a long time."

"Well, but how did he do it?"

"By striking the sea with a stick given him by God."

"And where is the stick now?" asked Hitler, very excitedly.

"The stick?" was the quiet reply. "Oh, that is in the British Museum."
—*Cosgrove's.*

The Gardener's Prayer. O Lord, grant that in some way it may rain every day, say from about midnight until three o'clock in the morning, but, You see, it must be gentle and warm so that it can soak in; grant that at the same time it would not rain on campion, alyssum, helianthus, lavender, and others. You in Your infinite wisdom know are drought-loving plants—I will write their names on a bit of paper if You like—and grant that the sun may shine the whole day long, but not everywhere (not, for instance, on the spirea, or on gentian, plantain lily, and rhododendron) and not too much; that there may be plenty of dew and little wind, enough worms, no plant lice and snails, no mildew, and that once a week thin liquid manure and guano may fall from heaven. Amen.—Karl Capek in *Open Book.*

The Change. "What did she do when he broke off their engagement?"

"Oh, she just flung her engagement ring on to her right hand and stalked out."

—*Exchange.*

The Need. It was formerly the practice here for counsel, before going to trial, to call the names of his witnesses, to see if they were present. If a witness did not answer, the court would tell the sheriff to "call him out"—i. e. require him to appear or be fined for nonattendance. One of M's most important witnesses did not answer present, so the court said, "Call him out, Mr. Sheriff." "I wish you would call him *in*, not out" said the lawyer.

Contributor: F. W. Thomas,
Asheville, N. C.

The Best Defense. Two Kentucky lawyers, both of whom were renowned for their abundant flow of words, made application for enlistment in the United States Army Air Force. They were being examined to determine their physical fitness. The army doctor who was making the examination stepped into the waiting room, where he met a fellow physician, to whom he said, "Those two big fellows in there ought not to be accepted, neither has a very good heart and both have a tendency toward high blood pressure." The doctor addressed suggested, "Then go in there and talk it over with them." "Not me," replied the examining doctor, "they have already talked my arm off and if I go back in there they will be examining me." Both lawyers were accepted.

Ky. Bar Ass'n Journal.

Examples of Early Advertising. Here is an old advertisement published in London:

"Two men beg leave to acquaint the public in general that they keep the cleanest barber shop in all London, where the people can have their hair cut for two pence, dressed for three pence, and be shaved for one penny. One of these men can bleed and draw teeth very well. He bleeds both in the English and German method, and he is exceedingly careful."

This one from a Dublin newspaper published early in the Eighteenth Century is full of interest:

"RAN AWAY FROM PATRICK MCDALLAGH.—Whereas my wife, Mrs. Bridget McDallagh, has gone away with herself and left me with her four small children and her poor blind mother, and nobody else to look after home and house, and I hear, has taken up with Tim Gugan, the lame fiddler, the same that was put in the stocks last Easter for stealing Bardy Doody's gamecock, this is to give notice that I will not pay for bite or sup on her account to man or mortal and that she had better never show the mark of her ten toes near my home again."

—*Commercial Law Journal*, September 1943.

(From an abstract of an address, "Adverting to Advertising," by Hon. Oscar W. Ehrhorn, Referee in Bankruptcy, Southern District of the State of New York, delivered at the annual dinner during the Regional Meeting of the New York Members Association of the C. L. L. A. held at the Hotel Martinique, New York City, June 21, 1943.)

Clipped Wisecracks. Many men would avoid failure in business if their wives did not have such extravagant husbands.

Divorce suits are always pressed with the seamy side out.

An elephant lives for 400 years, but then baggage men don't handle his trunk.

The building grafts are mainly what ails the building crafts.

Every girl makes one mistake on her wedding day, and that is when she thinks all her girl friends envy her.

"Do you drink?" "No." "Then hold this quart while I tie my shoe string."

—*Exchange.*

Military Reservation. As you know, several of the nation's swanky hotels have been taken over by the Army and $50-a-month doughboys are bunking in suites that used to fetch $25 a day.

A Michigan chap who didn't know about this recently wired his favorite Miami resort:

RESERVE SINGLE ROOM WEEK OF JANUARY THIRD.

A soldier encamped in the resort got hold of the telegram and replied:

GLAD TO MAKE FULL ARRANGEMENTS THROUGH YOUR LOCAL DRAFT BOARD.—*The Postage Stamp.*

This One Is on the Irish. Irishman: "Sure, and it's the Irish that are winning this war. Why, it took an Irishman to stop the Germans in Russia."

Bystander: "An Irishman?"

Irishman: "Sure, and did ye never hear of Marshal Tim O'Shenko?"

—*Cosgrove's.*

Dangerous Instrument. A recent headnote to the case of Roddenberry vs. State, reads: *"An information charging manslaughter by automobile while intoxicated* was not quashable for failure to aver that automobile was being operated on a highway, thoroughfare or street."

"I do not ever want to get hold of any such automobile, and I am confident the writer of the headnote feels the same," comments our contributor.

Contributor: T. E. Duncan,
Gainesville, Fla.

History Repeats. Oliver Wendell Holmes once defined happiness as "Four feet on a fireplace fender."—*Cosgrove's.*

Brain Battle. A friend of ours claims he overheard, on a train, a professor and a farmer engaged in a battle of wits.

To pass the time, the professor proposed a game of riddles at one dollar per riddle.

The farmer agreed, but said, "Yer better edjicated than I am, so how about me paying 50¢ and you paying a dollar?"

The professor agreed that this was fair enough and said that the farmer should ask the first question.

"Wall, what animal is it that has three legs walking and two legs flying?"

"Heh, heh," said the learned man. "Guess you rather have me. I don't know. Here's your dollar. What's the answer?"

"I don't know either," said the farmer. "Here's your fifty cents."

—*The Postage Stamp.*

Before Ration Points. Smaltz: "I eat six eggs for breakfast this morning."

Clutts: "You mean 'ate.'

Smaltz: "Well, maybe it was eight."

—*Exchange.*

Strike Three. It seems the gate broke down between Heaven and Hell. St. Peter appeared at the broken part and called out to the Devil, "Hey, Satan, it's your turn to fix it this time."

"Sorry," replied the boss of the land beyond the Styx, "my men are too busy to go about fixing a mere gate."

"Well then," grumbled St. Peter, "I'll have to sue you for breaking our agreement."

"Oh, yeah," yeah'd the devil, "where are you going to get a lawyer?"

Contributor: H. E. Proctor, Jr.,
Wynne, Ark.

Rented. In a defense area in which the rent problem was quite acute, a prospective tenant was passing a river when he observed a man floundering around and drowning. He yelled to the man and asked him where he lived.

"At 207 Cotton Avenue," he replied.

The questioner jumped back in his car and hastened to look for the landlord of the drowning man.

"Sir," he began when he approached him, "I just came from the river and observed your tenant drowning. I would like to rent the house in which he has been living."

"Sorry," replied the landlord "but I just rented it to the man who pushed him in."

—*The Rotarian.*

Good Illustration. Told to write a composition about what they would do if they had a million dollars, all the children in the class were busily writing away—except the lawyer's son.

The teacher, noticing his idleness, said severely: "Willie, don't you know that you are supposed to tell me what you would do if you had a million dollars?"

"Well," said the boy, lazily leaning back in his chair, "if I had a million dollars, this is exactly what I would do."—*Exchange.*

Crowded! "Item 7 (of a will) . . . I also give to my said wife, Sarah E. Flinn, the personal property we have brought into the house since our marriage, including the horse and buggy and cow."

Chaplin vs. Leapley, 35 Ind. App. 511–515.

Contributor: (Miss) Gene Plasterer,
LaGrange, Indiana.

Dilemma. Roland Diller, who was one of Lincoln's neighbors in Springfield, tells the following story:

"I was called to the door one day by the cries of children in the street. There was Mr. Lincoln, striding by with two of his boys, both of whom were wailing aloud. 'Why, Mr. Lincoln, what's the matter with the boys?' I asked. 'Just what's the matter with the whole world,' Lincoln replied. 'I've got three walnuts, and each wants two.' "—*Exchange.*

Age Description. I am in possession of a Chattel Mortgage written by a Justice of the Peace of Catawba County, North Carolina. The description of the property embraced in this mortgage reads as follows: "One Jersey cow with horns about six years old."

Contributor: Lloyd M. Abernethy,
Granite Falls, N. C.

Rain Check. Two colored citizens were discussing rationing.

"How long is this rationing business gonna last?"

"For the duration."

"But I heard they was gonna call the duration off."—*Exchange.*

Expert Testimony. One of our good judicial friends relates the following court incident which doubtless will bring back memories of certain trials to many a reader.

Old Man Mose had testified for the plaintiffs in a railroad-crossing case. On cross-examination the railroad lawyer asked, "Uncle Mose, did you testify that the train killed Mr. Jones on the fifteenth day of June?"

"Yassah, Boss; that's what I said, but all I know is that I saw the train cut off Mr. Jones' haid., I jes reasoned he was daid."

L & R News.